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In the Supreme Court of the United States

OCTOBER TERM, 1969

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JOHN F. DAVIS, C

No. 14

MAE WHEELER, et al.,
Appellants,

vs.

JOHN MONTGOMERY, Director of the STATE DEPARTMENT OF SOCIAL WELFARE, and RONALD BORN, General Manager of the SAN FRANCISCO CITY AND COUNTY DEPARTMENT OF SOCIAL SERVICES,
Appellees.

On Appeal from the United States District Court
for the Northern District of California

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On Appeal from the United States District Court for the Northern District of California

Brief for Appellees

QUESTION PRESENTED

Whether recipients of public assistance grants are afforded minimum due process of law in the withholding of a warrant under circumstances and procedures which may be stated as follows:

(1) Where the recipient receives notice immediately upon an initial decision being made of ineligibility and in no event less than three mail delivery days before the usual date of the warrant.

(2) Where the notice or notification specifies and contains the following elements:

(a) The county's proposed action,

(b) the grounds therefor,

(c) information needed or action required of the recipient to determine eligibility,

(d) that the recipient with legal counsel or other person may meet with an agency representative at a specified time or during a specified time period of not exceeding three working days, the last day of which shall be at least one day prior to the usual delivery date of the warrant at which time:

(e) the county's evidence will be fully disclosed,

(f) the recipient shall have the opportunity to produce the information or explanation referred to in (e) above and any other information he desires, and,

(g) the entire matter will be discussed for clarification and, where possible, resolution.

(3) where the warrant may be withheld only when the county's evidence is substantial in nature and reliable in source indicating probable ineligibility.

STATUTES AND REGULATIONS INVOLVED

The present case involves the constitutional, statutory and regulatory provisions set forth in the *single appendix* heretofore filed with this court under Rule 36 (hereinafter referred to as "A").

The case also involves the Department of Health, Education and Welfare (HEW) Handbook of Public Assistance Administration (hereinafter referred to as Federal Handbook) Part IV, sections 2300 (d), (e), (f), and (g) "Criteria for the Administration of the Plans" and section 6400 "Interpretation" which are set forth in Appendix I to the instant brief pages 1 through 5 (the Appendices infra will be referred to as "App.")

The present case also involves California Welfare and Institutions Code sections 12200-12202 set forth in Appendix II page 6, infra.

Also involved herein are the following: the California State Department of Social Welfare Public Social Services Manual (hereinafter referred to as PSS) section 44-325 "Changes in Amount of Payment"; section 40-155 "Principles and Methods of Investigation"; section 40-181 "Continuing Activities and Investigation"; section 48-001 "County Department Responsibility for Case Records"; section 48-013 "Inspection of Records by Applicant or Recipient"; which are set forth in Appendix III infra, pp. 7-20.

Further to be considered is the California State Department of Social Welfare Operations Manual section 22-109 "Request for Review and Fair Hearing: County Department Responsibility"; section 22-113 "State Department of Social Welfare Responsibility"; and recommended procedures set forth in section 22-200 "Client Complaints and Fair Hearings in Public Social Services"; section 22-203 "Concepts and Considerations"; section 22-203.4 "Written Confirmation of County Welfare Department Action"; section 22-205 "Establishment of Complaints and Appeals Unit" which are set forth in Appendix III infra pp. 20-26.

STATEMENT

Appellant, Mrs. Wheeler, as of August 30, 1967, received monthly Old Age Security (OAS) benefits in the amount of $113.95 and Social Security benefits of $44.60 per month. (A.56) On August 30, 1967, the San Francisco City and County Department of Social Services received information that Mrs. Wheeler had received some $6,000.00 in insurance proceeds and other death benefits upon the death of a son. (A.42) On the same day the county agency ques-

tioned Mrs. Wheeler by telephone about this. She admitted receiving these funds, and informed the county that during April 1967 she had transferred a Veterans Administration check for $4,528.15 to her grandson, nephew of the deceased son in accordance with the request of her deceased son (A.56). Although Mrs. Wheeler during this five-month period on several occasions had been in touch with her social worker, she did not report receipt of any of these funds (as required by Cal Welf & Inst Code § 12203) (A.42).

The county withheld Mrs. Wheeler's September 1, 1967 welfare check pending completion of its investigation. (A.56)[1]

On November 7, 1967 the county agency concluded that the transfer was made to avoid discontinuance of welfare benefits and determined that Mrs. Wheeler's action rendered her ineligible for continued benefits.[2] (A. 42)

During the months of September and October and until about November 10, 1967, Mrs. Wheeler lived on her "allowable reserve" and Social Security payments (A. 17).[3] The "allowable reserve" for OAS may not exceed $1200.00 cash.[4]

About November 25, 1967 she received an emergency food order from the county for $15.60, presumably as a result of having notified the county that her reserve funds were exhausted. (A. 18) With no cash assets she was considered

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1. PSS 44-325.423 effective April 1, 1968 prohibits such precipitous county suspension.

2. Cal. Wel. & Inst. Code § 12050(e).

3. The allegation that for nearly three months appellant subsisted *solely* on her $44.60 monthly Social Security check does not conform to the facts (A.B. 6).

4. Cal. Welf. & Inst. Code § 11154.

eligible for County General Assistance as of December 1, 1967 in the sum of $53.90 (A. 57)[5]

Appellant's request for a fair hearing was filed November 21, 1967 (A. 41).[6] The hearing was originally scheduled for December 15, 1967. It was postponed at Mrs. Wheeler's request and came on for hearing on December 22, 1967. (A. 39-40). The referee's decision was adopted by the Director of the State Department of Social Welfare on January 12, 1968 (A. 57). The decision ordering Mrs. Wheeler restored to OAS effective September 1, 1967 (A. 57) was rendered within 52 days of her request for the hearing. The HEW regulation (Hand Book of Public Assistance Administration section 6200(j)) not effective until July 1, 1968, requires the hearing and decision to be made within 60 days of the request for a hearing (A. 65).

Old Age Security payments were restored by virtue of a temporary restraining order issued by the court below on December 1967. The district court judge entered a class action order concluding that the prerequisites of Federal Rules of Civil Procedure 23(b) (2) were met. The court, finding that the provisions of 42 USC section 2281 were satisfied, ordered the convening of a three judge court. Appellee John Montgomery, Director of the California

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5. The San Francisco General Assistance program, financed solely by the county, not only includes the cost of living expenses in accordance with the general assistance standards but includes as well such special needs as special diet allowances and necessary medical care. (Declaration of Ronald H. Born, December 1, 1967 Docket Entries 7-8 A. 1) Mrs. Wheeler was receiving medical care at Hahnemann Hospital in late November 1967 when she executed her Affidavit in Support of Motion for Temporary Restraining Order (A. 18).

6. Mrs. Wheeler could have requested a fair hearing immediately upon being notified that her welfare check was being withheld. Cal. Welf. & Inst. Code § 10950. Operations Manual Section 22.021 requires "Written Notice of the right to a fair hearing shall be included in every Notification . . . of the . . . suspension of aid . . ."

State Department of Social Welfare then promulgated Regulation PSS 44-325.43. The court below found that the regulation comports with the due process clause of the Fourteenth Amendment to the United States Constitution and dismissed the action. (A. 65).

SUMMARY OF ARGUMENT

The essence of Appellants attack upon the decision of the court below is contained in Appellants Jurisdictional Statement, page 16, heading VI:

> "VI. The informal conference prior to termination and the HEW fair hearing after termination do not combine to meet due process of law.
>
> "The lower court opinion was based upon a feeling that a combination of the informal conference prior to termination and the fair hearing after termination would jointly create due process of law."

However, Appellants are unable to cite authority directly in point with their above contention but rather rely on cases which state broad constitutional principles.

Conversely, the correctness of the decision of the court below and the constitutionality of the notice and hearing provisions herein involved must be measured in light of the fact that: (1) determinations as to continued eligibility must be made promptly and no less often than once a month with respect to over one and one-quarter million public assistance recipients, and (2) the State of California provides recipients with the fair hearing process called for and required by both the Social Security Act and the provisions of state law (Welfare & Institutions Code §§ 10950-10965); the latter providing for judicial review.

With approximately 1,276,000 recipients of the various categorical aid programs in California, County welfare

departments must make an enormous number of decisions daily respecting continued eligibility—and thus must develop a rapid method of fairly determining whether to suspend, terminate or withdraw public assistance grants for all recipients. The number of determinations required and the need for an expeditious and fair review of these determinations are essential factors in assessing the constitutional adequacy of the regulation and procedures upheld by the court below.

ARGUMENT

I. The California Suspension and Termination of Aid Procedures Fully Comport with Due Process Requirements

INTRODUCTION

The State of California does not dispute the right of welfare recipients to some hearing prior to suspension or termination of aid. This is precisely the claim originally pressed by appellants (A. 63). After this action was instituted and the temporary restraining order issued, appellee John Montgomery, Director of the California State Department of Social Welfare, adopted new regulations to implement existing procedures to assure that pre-withholding of aid procedures would meet due process requirements. At no time however, has appellee conceded that there is a constitutional entitlement to welfare benefits with the concomitant entitlement to the protections required for First Amendment rights.

Due process is a flexible concept dependent on the particular circumstances.

> "The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.' '*Cafeteria & Restaurant Workers Union etc. v. McElroy,* 367 U.S. 886, 895 (1961) "[D]ue process," unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. . . .' *Joint Anti-Fascist Comm. v. McGrath,* 341 U.S. 123, 162-163 (1951) (concurring opinion)."

The pre-withholding investigation and post conference procedures discussed below, as well as the pre-withholding conference, demonstrate that these combined procedures accord aid recipients all of the due process that is constitutionally required.

A. AN INVESTIGATION CONDUCTED WITH THE CONSENT OF THE RECIPIENT PRECEDES NOTICE OF INITIAL DECISION TO WITHHOLD A WARRANT

The notice given a recipient, pursuant to PSS 44-325.43, of the county's initial decision to withhold a warrant, does not come as a bolt from the blue. Eligibility is reconsidered and redetermined periodically and whenever the situation requires it. (Federal Handbook Part IV, 2300(d) App. 1 p. 1.) Reinvestigation entails a personal interview with the recipient.[7] (PSS 40-181.3.)

HEW has made explicit that "in the process of determining initial and continuing eligibility: . . .

> (2) The agency takes no steps in the exploration of eligibility to which the applicant or recipient does not agree; it obtains specific consent for outside contact (whether with social agencies, doctors, hospitals, and similar resources, or with relatives or other individuals); the consent covers the purpose of the contact as well as the individual or agency to be consulted; and where collateral sources are contacted, a clear interpretation is furnished of what information is desired, why it is needed, and how it will be used. If other procedures are followed in an exceptional situation, they are consistent with IV-2200(a) and IV-2300(a), and the case record specifies the reasons why

7. In *McCullough v. Terzian*, now pending in the Court of Appeal, State of California, First Appellate District, 1 Civil No. 25830 and dealing with this same issue, Mrs. McCullough, prior to being interviewed by a county investigator, was advised that she had a right to have counsel present at the interview. At the interview the evidence regarding ineligibility was discussed with her. (CT 64-71)

they were needed and the specific procedures followed." (Federal Hand Book Part IV 2300(e)(2).)

State regulations are to the same effect, (PSS 40-155.24, App. III, p. 12; PSS 40-181.31, p. 14). Information secured shall be evaluated qualitatively rather than quantitively and in light of its internal consistency (PSS 40-155.1, App. II, p. 10). Only when the evidence "is both substantial in nature and reliable in source" indicating probable ineligibility of recipient is the notice given under PSS 44-325.43 (PSS 44-325.421 App. III, p. 7).

The initial decision regarding probable inelligibility must be based on adequately substantiated facts, not rumor, gossip or surmise.

1. THE REGULATION PROVIDES FOR ADEQUATE AND TIMELY NOTICE

PSS 44-325.43 provides that the recipient shall be notified of the county's initial decision to withhold welfare benefits and the grounds therefor at least "three (3) mail delivery days prior to the usual delivery date of the warrant." The notice must state in addition to the grounds for the proposed action "what information, if any, is needed or action is required to re-establish eligibility or to determine a correct grant." Also, the regulation requires a home call by appropriate personnel if the county has reason to believe that the notice may not be delivered or the recipient will not understand it. This clearly meets the due process requirement that there be ". . . notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 314; *Schroeder v. City of New York*, 371 U.S. 208, 211.

These regulations require a recipient to be more fully informed of the grounds for the county's proposed action

than the California Administrative Procedure Act[8] requires for the initiation of full scale ajudicatory proceedings against the holder of a business or professional license, *e.g.*, doctor, pharmacist, barber, pest control operator, etc. Government Code section 11503 provides in relevant part:

> "A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules ..."

California provides that the welfare case record shall be open to inspection by the recipient and his authorized representatives at all times. (PSS 48-013, App. III p. 20.) Eligibility investigation reports including "the pertinent information obtained during the investigation, and the sources from which relevant data was secured," are part of the case record. (PSS 48-001.11, App. III pp. 17-18.) (See also Cal Welf & Inst Code § 10850.1)

This is not true for the holder of a business or professional license. Only after the accusation is filed does the licensee have limited right of discovery. (Calif. Gov. Code § 11507.6.) Thus, there is no relevant comparison between a minimum of three mail delivery days' notice for a welfare recipient to answer and the twenty-five days for answer under the California Administrative Procedure Act. (Gov. Code §§ 11505(b) and 11509.[9])

Notice of charges of student misconduct received two days before the disciplinary hearing, was held to be ade-

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8. California Government Code §§ 11500-11528.

9. Amicus curiae brief App. B, p. 13.

quate and timely by the court in *Jones* v. *State Board of Education of and for State of Tenn.*, 279 F.Supp. 190, 199 (M.D.Tenn. 1968). The court in *Jones* pointed out that in *Due* v. *Flordia A.&M. University*, 233 F.Supp. 396 (N.D.Fla. 1963) "a letter was read to the students for the first time at the hearing against them. This was the only notice of the charge that the plaintiffs were afforded, yet the court held the notice to be both adequate and timely."

Appellants allege that the conference is not scheduled for a particular time or with a particular person and the recipient is not advised of her right to appear. (Appellants' Brief p. 11.) Appellants disregard the specific requirements of PSS 44-325.434 that the recipient be informed that he "may have an opportunity to meet with his case worker, an eligibility worker, or another responsible person in the county department, *at a specified time or during a given time period . . . at a place specifically designated. . . .*" (Emphasis added.)

The "Notice of Action" (Appellants' Appendix V pp. 21-22) is only one piece of the information required by the regulation. If the only information received by a recipient was the notice of action as alleged by appellants,[10] there has been a clear violation of the regulation. The notice form, if used, must be accompanied by a letter or otherwise include the information regarding:

(1) The right to, and time and place for a conference;
(2) the grounds for the proposed action;
(3) what information is needed from the recipient;
(4) his right to be represented at the conference.[11]

10. Appellants' Brief p. 18.
11. Operations Manual 22-203.4 App. III, p. 22.

In addition, the recipient is advised that the evidence regarding ineligibility will be fully discussed with him and his representative. Further, this information is available at any time by inspecting the case record.

Prompt resolution of questioned eligibility is clearly to the recipient's advantage. In California eligibility for an OAS grant is not dependent on indigency.[12] If aid is required to be paid pending a fair hearing and the recipient is found ineligible the county may obtain restitution.[13] This may entail exhaustion of reserve funds, sale of home property and other assets to the same extent as any other judgment debtor.

A quick and simple procedure is to the advantage of the county and state as well as the recipient in obviating the time consuming process of the fair hearing. Moreover, "Protection of the fisc" has not been rejected by the appellees.[14] The statement "cost to the state has not been put in issue" was largely based on the incompleteness of the statistics on such costs stemming from the *McCullough* peremptory writ. The California Court of Appeal commented that the proferred "evidence" did not purport to be accurate.

C. THE PRE-WITHHOLDING OF AID CONFERENCE, DESIGNED TO AFFORD RECIPIENTS PROMPT RESOLUTION OF ELIGIBILITY QUESTIONS, MEETS DUE PROCESS REQUIREMENTS

The pre-withholding of aid conference conforms to HEW's requirement for:

> "Effective complaint and adjustment procedures, whereby corrective action may be easily requested and readily taken without the need for a [fair] hearing,

12. See *San Bernardino County v. Simmons*, 46 Cal. 2d 394, 400, 296 Pac. 2d 329, (1956).

13. Cal. Welf. & Inst. Code §§ 12203, 12205.

14. Appellants' Br. pp. 16 n. 17, 17.

are necessary, when indicated. Advance opportunity afforded the recipient to respond to questions which could result in change of grant or termination is a significant part of such procedures. So is written, and whenever practical, oral information of the reasons for change, denial, or termination. This is particularly important where the agency decision is based on judgmental factors or eligibility requirements that entail evaluative decisions on the part of workers, as compared to decisions based on non-debatable facts (such as receipt of OASI, death, etc.). However, the State and local agency adjustment procedures cannot be allowed to interfere with the hearing process."[15]

1. Confrontation and cross-examination are not essential to "due process" at the time of and under the circumstances of these proceedings

Appellants assert that the regulation is constitutionally deficient in that it fails to afford the recipient the right "to confront and cross-examine". This alleged defect is without merit. The court in *Dixon* v. *Alabama State Board of Education,* 294 F.2d, 150, 159 (5th Cir.) expressly rejected the right to cross-examine witnesses. Nor was such condition considered essential in *Knight* v. *State Board of Education,* (M.D. Tenn.) 200 F. Supp. 174, 178 (1961). In *Knight* the court concluded that "the rudiments of fair play and the requirements of due process vested in the plaintiffs [suspended students] the right to be forewarned or advised of the charges to be made against them and to be afforded an opportunity to present their side of the case."

Nonetheless the *Dixon* and *Knight* decisions are cited by Appellants as creating a due process requirement for a "full trial-type hearing" for students at state schools.[16]

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15. Federal Handbook Part IV, 6400(a), App. I, p. 4. See also section 2300(d)(5), App. I, p. 1.

16. Comment, "Withdrawal of Public Welfare: The Right to a Prior Hearing," 76 Yale L.J. 1234, 1239 (1967).

2. Due process does not require an impartial decision maker for an administrative proceeding such as this one

Even in a full-scale trial type administrative proceeding the combination of ajudicating function with prosecuting or investigating functions will not ordinarily constitute a denial of due process. *Marcello* v. *Bonds,* 349 U.S. 302, 311 (1955); *Federal Trade Comm'n.* v. *Cement Institute,* 333 U.S. 683, 700-703 (1948), *Pangburn* v. *C.A.B.,* 311 F.2d 349, 356 (1st Cir. 1962); *Holt* v. *Raleigh City Board of Education,* 265 F.2d 95, 98 (2d Cir. 1959) *cert. den.* 361 U.S. 818. 2 Davis, Administrative Law Treatise (1958) p. 175 et seq.

In California an administrative agency need not use the the services of an impartial hearing officer unless required by statute to do so. This is so even though the board makes the initial decision to terminate employment and conducted its own investigation. *Griggs* v. *Board of Trustees,* 61 Cal. 2d 93, 97-98, 37 Cal. Rptr. 194, 389 P.2d 722, (1964).

However in the interest of reaching an immediate and equitable decision without the necessity of going to a fair hearing appellee Montgomery has recommended to the counties the establishment of a Complaints and Appeals Unit.[17] Many counties have such a unit which is separate and apart from the "line", (i.e., case worker, supervisor,) involved in the initial decision to withhold aid. In the small counties the unit, necessarily, might be composed solely of the director.

3. Appellants other due process attacks on the pre-withholding procedures are not supported by fact or law

Appellants make the unfounded contention that the regulations fail to require a decision based on the evidence at the hearing or that there even be a decision. The regulations require full disclosure of the county's evidence and the recipient has access to the case records plus the opportunity

17. Operations Manual 22-205, App. III, p. 24.

for production of whatever information and evidence he desires to introduce. The county's decision to terminate aid or withhold aid for further investigation must be based on evidence both substantial in nature and reliable in source indicating probable ineligibility. In *Sniadach* v. *Family Finance Corporation,* ..... U.S. ....., 37 U.S. Law Week, 4520 (June 9, 1969) Mr. Justice Harlan concurring stated, "I think that due process is afforded only by the kinds of "notice" and "hearing" which are aimed at establishing the validity, *or at least the probable validity,* of the underlying claim against the alleged debtor before he can be deprived of his property [wages] or its unrestricted use." (Emphasis added.) This is precisely what is required by the regulation. Substantial evidence has been defined by this Court as relevant evidence that a reasonable mind might accept as adequate to support a conclusion, that is, whether a fair and reasonable mind would accept it as probative of the issue.[18]

Appellants decry the lack of a transcript or record of the proceedings. In *Due v. Florida A and M University,* 233 F.Supp. (N.D. Florida) 396, 403 (1963) the court held due process was satisfied in that:

> "There was notice to each of these plaintiffs, the charge was made explicit, and each was afforded full opportunity to be heard, and, in fact, was heard to the point where each said he had nothing more to say.
>
> "A fair reading of the *Dixon* case shows that it is not necessary to due process requirements that a full scale judicial trial be conducted by a university disciplinary committee with qualified attorneys either present or formally waived as in a felonious charge under the criminal law. There need be no stenographic or mechanical recording of the proceedings."

18. *Consolidated Edison Co. v. National Labor Relations Board,* 305 U.S. 197, 229 (1938).

In the instant situation no useful purpose would be served by making such a record since it is clear that the designated next administrative step is the "fair hearing" which is de novo and transcribed, thus being available for court review after administrative remedies have been exhausted.

Appellants' final attack on the regulatory procedure is that the burden of proof is placed on the recipient to prove he is entitled to public assistance; this apparently based on the "initial ex parte decision to terminate aid."[19]

The initial decisions of all administrative agencies whether they be to terminate employment, a driver's license or welfare benefits are ex parte decisions on the part of the agency.[20] The fact that the county agency has made an initial but still tentative ex parte determination that aid should be withheld cannot be interpreted as constituting an effective shift in the formal and legal concept of burden of proof.[21]

D. AVAILABLE POST CONFERENCE PROCEDURES AFFORD RECIPIENTS ADDITIONAL DUE PROCESS

If the decision following the conference is not to the recipient's liking he may request review by the county department staff designated for that purpose.[22] This is of particular importance if the conference has been with the recipient's social worker or direct supervisor. The regulation requires the review staff to promptly reassess the recipient's situation and to take immediate action and effect

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19. Appellants' Brief p. 22.

20. *Griggs v. Board of Trustees*, 61 Cal. 2d 93, 97, 37 Cal. Rptr., 194, 389 P.2d 722 (1964).

21. "This phase of the plaintiffs' argument resolves itself basically into an unfounded argument of semantics brought by the use of the word 'readmit' by the F.A.C." *Jones v. State Board of Education*, 279 F.Supp. 190, 202 (M.D. Tenn. 1968).

22. Operations Manual section 22-109. App. III pp. 20-21.

any adjustment as may be appropriate. The recipient is again informed of his right to a fair hearing. Then if the recipient "has not achieved an understanding with the county" he may request review by the State Department of Social Welfare Complaints Staff who shall reassess and review the situation promptly. The State Staff shall request the county to promptly reassess the problem and may inform the county of the intent or meaning of applicable regulations. The recipient is again informed of his rights to a fair hearing.[23] None of these adjustment procedures, conferences, county and state review can be allowed to interfere with the fair hearing process.[24]

In *Robertson* v. *Bowman,* Civil Action No. 51364 (N.D. Cal. June 21, 1969) the Court order for a full hearing prior to termination of county welfare, does not support appellants' contention that the procedures before this Court are inadequate.[25] The basis for the Court's order in *Robertson* was that the county had no procedures at all prior to actual notice of termination with no provision for a fair hearing following termination. General assistance in California is financed and administered solely by the county under procedures and standards determined solely by each individual county.

As of July 1, 1968, HEW has required that the hearing and decision be made within 60 days from the request for the fair hearing.[26]

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23. Operations Manual sections 22-113. App. III p. 21.

24. Federal Handbook Part IV section 6400(a). App. I p. 4.

25. Appellants' Brief p. 23.

26. Federal Handbook Part IV, section 6200(j). California has not been able to achieve full compliance with the 60-day requirement because of the greatly increased welfare caseload and the number of requests for fair hearing with no comparable increase in the number of hearing referees.

Thus there is provision for a "trial" which is to be held and decided within a limited and defined time following withholding or termination of aid;[27] precluding the defects appellants attribute to the pre-withholding of aid procedures.

II. The Social Security Act Does Not Require Continuation of Welfare Assistance Pending a Fair Hearing

The Social Security Act in plain and simple language requires a state plan to "Provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for assistance under the plan is denied or is not acted upon with reasonable promptness. . . ."[28]

There is nothing in the foregoing that hints, implies, or insinuates that the "fair hearing" must be held before assistance is suspended or denied. The Department of Health, Education and Welfare has not heretofore so interpreted it. The HEW regulation requiring continuation of aid pending the fair hearing decisions was originally issued in proposed form on November 30, 1968, to be effective July 1, 1969, (33 Fed. Reg. at 17853) as the result of a promise made by then Secretary Cohen to the Reverend Ralph Abernathy.[29] There is no evidence that it was the result of intensive analysis and review (Appellants' Brief p. 20). The regulation was finally issued over the vigorous protests of all the States in Volume 34 Fed. Reg. No. 16, p. 1144, January 23, 1969 to be effective October 1, 1969.

27. The *Family Finance Corporation v. Sniadach*, 37 Wis. 2d 163, 154 Northwest 2d 259, 269 dissenting opinion.

28. Appellants' Brief, App. 1.

29. Jurisdictional Statement p. 7.

The delay can be attributed only to these objections and not "to allow those States where no such system existed to adapt to the new procedures."[30]

Every State participates in one or more of the aid programs and every State is required by the Social Security Act to establish, and has established, a fair hearing procedure.

Heretofore and until October 1, 1969, (unless repealed or revised), the HEW regulations authorized termination, suspension or withholding of aid prior to a fair hearing. For example Section 6200 (k) of the Federal Handbook provides, "When the hearing decision is favorable to the claimant, or when the agency decides in favor of the claimant prior to the hearing, *the agency will make the corrected payments retroactively to the date the incorrect action was taken.*" (Emphasis added.)

Section 6300(*g*) reads in part, "Insofar as may be applicable, a decision in favor of the claimant *applies retroactively to the date the incorrect action* was taken, and also applies prospectively." (Emphasis added.)

Section 6500 provides that Federal Financial Participation is available in: "(a) Payments made to carry out hearing decisions, or to take corrective action prior to the hearing, *including corrected payments retroactively to the date the incorrect administrative action was taken.* (b) Payments of assistance continued pending a hearing decision."

We do not accept the apparent contention that HEW has violated the Social Security Act in enacting the above referred to regulations. If Congress had thought so it would have rectified HEW's "erroneous" interpretation during the course of its massive revisions of the Social Security Act effective January 2, 1967. (P.L. 90-248.)

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30. Appellants' Brief p. 26 n. 32.

III. The Hearing Provided by the Regulation Meets the Hearing Requirements of the California Welfare and Institutions Code Authorizing the County to Cancel, Suspend or Revoke Aid "For Cause".

It is contended by amicus curiae Legal Aid Society of Alameda County that certain sections of the Welfare and Institutions Code require a hearing prior to the suspension of aid inasmuch as said section authorizes the county to suspend aid only "for cause." The sections referred to are Welfare and Institutions Code sections 12200 (O.A.S.); 12700 (Blind); 11458 (AFDC); 13750 (Disabled). (Welf. & Inst. Code §§ 12200-12202, App. II, p. 5.) We have no quarrel with this contention with one exception; California Welfare and Institutions Code section 12202 provides: "If at any time the [county] department has reason to believe that aid has been obtained improperly it shall cause an inquiry to be made and *may suspend payment of any installment pending the inquiry.* . . ." (App. II, p. 6) (Emphasis added.)

But more to the point herein, appellants' right to an informal hearing or conference with the county agency under the regulation prior to suspension of aid and the right to a formal hearing before the appellee-director of the State Department of Social Welfare after suspension is precisely the procedure the California Supreme Court found to be required under the Vehicle Code in *Ratliff v. Lampton*, 32 Cal. 2d 226, 231-232 (1948), 195 P. 2d 792. In *Ratliff* the court held that:

> "When read together, these sections may be construed as providing for an investigation and hearing conducted by the department which would afford the licensee an opportunity to *present evidence* under the rule in the *Carroll* and *Steen* cases. If the department determined as a result of such investigation and hearing that good cause existed therefor, it might suspend or revoke, but the order would not become effective

> until 10 days after notice of the action taken. At any time within 60 days after such notice the licensee was entitled to have the action of the department reviewed in a more formal hearing before the director or his representatives, in which the final decision was to be made by the director. *The action of the department in suspending or revoking a license would not be stayed, however, by an application for a hearing,* and the order would become effective at the expiration of the 10-day period notwithstanding the pendency of a review by the director." (Emphasis added; 32 Cal. 2d 226, 231-2)

All that the court required in *Ratliff v. Lampton,* was "a prior opportunity to be heard . . . regardless of whether there is right to administrative review," (32 Cal. 2d at 230) "which would afford the licensee an opportunity to present evidence under the rule in the *Carroll* and *Steen* cases." (i.d. page 231). And what is the rule in these cases? In *Steen v. Board of Civil Service Commissioners,* 26 Cal. 2d 716; 160 p. 2d, 816 (1945) it should be noted the Civil Service employee was already discharged or suspended without any hearing. The Court's concern was not the summary suspension but the hearing before the Civil Service Commission to review that decision; the latter was much the same as the function of the fair hearing under Welfare & Institutions Code sections 10950, et seq. If the department finds for the welfare recipient, the county is directed to re-instate and reimburse the recipient. In *Steen,* the law provided that the county employee may be reinstated by the Civil Service Board following an investigation by the board or the board may make an order sustaining the discharge. The full hearing required under *Steen* was before the Civil Service Commission and followed the employee's suspension by the appointing power, *i.e.,* the Department of Water and Power. To the same effect: See also *LaPrade*

v. Department of Water & Power, 27 Cal. 2d 47 162 p. 2d 13 (1945); *English v. City of Long Beach*, 35 Cal. 2d 155 217 p. 2d 22 (1950).

In *Carroll v. California Horse Racing Board*, 16 Cal. 2d 164 105 p. 2d 110 (1940), concerning the revocation of a horse trainer's license, the court held that since the statute provided that no license may be revoked without just cause the Legislature intended notice and hearing to enable the licensee to appear and answer any charge or complaint lodged against him. The court held that this necessarily requires a fair consideration of any evidence offered by the accused licensee. PSS 44-325.43 requires that recipients receive notice and may have a hearing to answer the charge of ineligibility and that a fair consideration be given to the evidence offered.

Amicus Curiaes' statement (Br. 26) that "Procedures virtually identical to those provided by PSS 44-325.43 were, as a practical matter, undoubtedly available in *Ratliff* also, since the statute required 10 days notice prior to the revocation of the license" is no where substantiated in the decision. The Department of Motor Vehicles had established no procedures at all and maintained that it could take summary action. Further, the department contended that the 10 days notice of revocation was to give the licensee an opportunity to arrange for his affairs, thus belying any presumption that the department was willing to meet and confer with the licensee. The court required a hearing but held that the department hearing could be less formal than the administrative hearing before the Director of the Department.

Keenan v. *San Francisco Unified School District*, 34 Cal. 2d 708; 214 P.2d 382 (1950) is cited by Amicus Curiae (Br. 26) for the proposition that an informal interview with administrative officers "did not constitute a hearing contemplated by the statutes" hence the "informal conference" provided by the regulation is fatally deficient. The informal

interviews Mrs. Keenan had with administrative officers of the Board of Education which were held not to be the hearing contemplated by the "for cause" provision of the Education Code, did not purport to be a "hearing". These interviews were preliminary to the board's formal action dismissing her. "Mrs. Keenan was not notified of the meeting and was not present. . . . It was stipulated at the trial that she was not afforded a hearing." 34 Cal. 2d at 711. The court concluded "that the cause relied upon by the school authorities must be specified and a hearing afforded the the teacher to meet the charge." *Id.* p. 715.

Subsequently, in *Tucker* v. *San Francisco Unified School District,* 111 Cal. App. 2d 875, 880, 882 245 P.2d 597 (1952) the court (in considering rules adopted by the Board of Education following the *Keenan* decision to implement dismissal "for cause" of probationary teachers) stated that "dismissal for cause only obviously implies a hearing and finding of cause" but then concluded (despite Amicus Curiae's assertions to the contrary), "neither did the *Keenan* case or any of the cases cited therein,[31] *determine what is necessary to meet the requirment of notice and a hearing." Id.* 882. (Emphasis added.)

Finally, *Ratliff* neither specifically nor impliedly rejects the appellee's contention that the hearing required by the "for cause" statute need be no more and could very well be less than procedural due process requires. In *Ratliff* and *Keenan* the court stated that although the Constitution does not require a hearing the Legislature could and had required one in the statutes under consideration. It is for these statutorily imposed hearings that the court used the fundamental due process requirements of notice and op-

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31. *Ratliff v. Lampton,* 32 Cal. 2d 226; 195 P.2d 792 (1948), *Carroll v. California Horse Racing Board,* 16 Cal. 2d 164 (1940); *Covert v. State Board of Equalization,* 29 Cal. 2d 125 173 P.2d 545 (1946).

portunity to be heard. See *Anderson National Bank* v. *Luckett*, 321 U.S. 233, 243, 246-247 (1944). In *Anderson* this Court held that the sufficiency of the notice and hearing is to be determined by considering the purpose of the procedure, its effect on rights asserted and all other circumstances which may render the proceeding appropriate, *id.* p. 246.

Amicus Curiae is in error in stating that six months is permitted before a decision is rendered in a fair hearing under Welfare & Institutions Code sections 10950 et seq. (Br. 27). Effective July 1, 1968, the Department of Health, Education and Welfare, in establishing one of the requirements for state plans provided that the decision must be made within 60 days. Federal Handbook of Public Assistance Administration, Section 6300(j) reads, "Prompt, definitive and final administrative action will be taken within 60 days from the date of the request for a fair hearing." In compliance with HEW's requirement, appellee Montgomery adopted implementing regulations. In order to maintain conformity with federal requirements the Legislature has specifically provided that any statute "shall become inoperative to the extent that it is not in conformity with federal requirements." (Welf. & Inst. Code § 11003.)

Under the regulation the recipient is afforded prior apprisal of the proposed action, the grounds therefor and what information is needed from him. The recipient is informed of the nature and extent of the information upon which the county has based its proposed action. He is entitled to be represented by counsel to present his evidence and an opportunity to meet with a County Welfare Department representative in order to discuss and, if possible, resolve the question of eligibility. The county may withhold aid payments only if it has substantial evidence of probable ineligibility.

Amicus Curiae assert that the recipient is only afforded an "informal conference" thereby implying that such a hearing ipso facto fails to meet the "for cause" requirement. This is simply not true. The Federal HEW Regulation relating to the full scale adjudicatory type fair hearing requires that even this last hearing be an informal one. Section 6400(a) Federal Handbook of Public Assistance Administration provides that the fair hearing "is conducted in an informal rather than formal court type procedure *in order to serve the best interests of the claimant,* however, the hearing is to be subject to the requirements of due process" (Emphasis added).

CONCLUSION

The statutes and regulations involved together with the policies and procedures evolved therefrom fully accord due process of law and any other constitutional safeguards heretofore enunciated in the welfare context. That this is so has been demonstrated by the present brief and by the lack in opposing briefs of any citation of authority dealing directly with the matters which were the subject of decision by the court below.

The Court of Appeal of the State of California, Fir
Appellate District, Division Three, on August 19, 19
issued its decision in *McCullough v. Terzian* (1 Civil
25830) reversing the judgment of the Superior Court a
reaching the same conclusion as the court below that th
challenged procedures are constitutional. Heavy relian
has been placed by appellants on the decision of the low
court in *McCullough,* set out in full in the Jurisdictiona
Statement, Appendix H. We desire to place the *McCullough*
appellate court decision before this Honorable Court an
to this end have added Appendix IV.

For the foregoing reasons, the judgment below should
be affirmed.

Dated: August 28, 1969.

Respectfully submitted,

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(Appendices Follow)

Appendix I

Excerpts from United States Department of Health, Education and Welfare, Handbook of Public Assistance Administration

1. Federal Handbook § 2300 et seq. *Criteria for the Administration of the Plans.* Effective 2-6-68.

2300. (d) Eligibility is reconsidered and redetermined periodically and whenever the situation requires it. Specifically, the agency:

(1) Identifies the conditions of eligibility subject to change.

(2) Takes appropriate timely action when there is information in advance that changes are likely to occur in an individual's situation which may affect his eligibility or the amount of his assistance.

(3) Acts promptly—within the applicable agency time standards — to determine continuing eligibility, when it learns from the recipient or other source (e.g., another person or agency), that the recipient's situation has so changed that his eligibility or the amount of his assistance may be affected.

(4) Redetermines eligibility regularly, within the applicable agency time standards specified in agency policy, at which time all eligibility factors subject to change are reconsidered.

(5) Gives advance notice of questions it has about an individual's eligibility so that a recipient has an opportunity to discuss his situation before receiving formal written notice of reduction in payment or termination of assistance.

(e) In the process of determining initial and continuing eligibility:

(1) The agency, in policy and practice, recognizes the rights and responsibilities of applicants and re-

cipients to be responsible participants in their relationship with that agency; it makes clear to them the kinds and sources of factual information that are acceptable as a basis for establishing eligibility; it uses them as the primary source of information about facts concerning their eligibility.

(2) The agency takes no steps in the exploration of eligibility to which the applicant or recipient does not agree; it obtains specific consent for outside contact (whether with social agencies, doctors, hospitals, and similar resources, or with relatives or other individuals); the consent covers the purpose of the contact as well as the individual or agency to be consulted; and where collateral sources are contacted, a clear interpretation is furnished of what information is desired, why it is needed, and how it will be used. If other procedures are followed in an exceptional situation, they are consistent with IV-2200(a) and IV-2300(a), and the case record specifies the reasons why they were needed and the specific procedures followed.

(3) If the agency does not use a declaration form, in each determination of eligibility the agency has a personal interview with the applicant or recipient, unless this is impractical or would delay case action. If difficulties of transportation or other causes preclude a personal interview, contact is made by telephone or correspondence or with someone who can act responsibly for him, except that, in initial determinations of eligibility, a personal interview with the applicant is made as soon as possible.

(4) If the agency has to assume responsibility for the entire process of determination of eligibility, or for parts of it, because of the individual's inability to participate in establishing his eligibility, the agency takes measures to help him establish his eligibility for assistance, and it adheres to the same principles as would be followed if he were participating, including making discriminating selection of sources to be contacted.

(5) When available information from the applicant or recipient is inconclusive and does not support a decision of eligibility, the agency explains to the individual what questions remain and how he can resolve or help to resolve them, what actions the agency can take to resolve them, and the necessity of resolving the questions if eligibility is to be established or continued. If the individual is unwilling to have the agency seek verifying information, the agency, unable to determine that eligibility exists, denies or terminates assistance. In such instances, the individual is notified in writing of the decision, and that he has the right to request a fair hearing on the decision and a right to reapply at any time.

(6) If a declaration form is used in the determination of eligibility process:

(i) Eligibility conditions for the program, both as to number and content, are simple, easily understood by applicants and recipients, and can be determined objectively.

(ii) Forms are simple, clear, relate primarily to eligibility for a specific program or programs, and meet Federal standards.

(iii) Agency policies and procedures assure that appropriate staff is available to assist individuals who are unable to fill out their own forms or who wish assistance.

(iv) The agency's system to test the validity of the determinations based on declaration forms includes methods to test the validity of a continuous random sample of all positive and negative case actions — initial and redeterminations — and the methods, forms and procedures meet Federal standards and appropriately relate to the federally required quality control.

(f) Individuals are informed of the reason(s) for reduction or termination of assistance by a statement of the specific agency policy which serves as the basis for the action. Such notification is given in writing and orally when necessary for clear understanding. There is the same emphasis on helpfulness by agency staff to individuals in connection with the redetermination of eligibility, reduction or termination of assistance as there is in the application process.

6400. *Interpretation*

(a) *Opportunity for a Fair Hearing*

Fair hearing procedures, including the conduct of the hearing, are designed to assure the right of every claimant to demand and obtain a fair hearing. The claimant's freedom to request a hearing, whenever he believes that proper consideration has not been given to all the circumstances surrounding his claim, is a fundamental right and is not to be limited or interfered with in any way.

Since, under the Federal act and the State plan, every aggrieved claimant is entitled to the opportunity for a hearing, only the claimant may withdraw his request for a hearing and this is to be in the form of a written withdrawal.

Effective complaint and adjustment procedures, whereby corrective action may be easily requested and readily taken without the need for a hearing, are necessary, when indicated. Advance opportunity affored the recipient to respond to questions which could result in change of grant or termination is a significant part of such procedures. So is written, and whenever practical, oral information of the reasons for change, denial, or termination. This is particularly important where the agency decision is based on judgmental factors or eligibility requirements that entail evaluative decisions on the part of workers, as compared to decisions based on non-debatable facts (such as receipt of OASI, death, etc.). However, the State and local agency adjustment procedures cannot be allowed to interfere with the hearing process.

Appendix II

California Welfare and Institutions Code Statutes Governing Termination of Aid

12200. The county may for cause, and upon instructions so to do by the department, shall cancel, suspend, or revoke aid. Upon request of the department, an immediate report of every suspension shall be made to the department stating the reason for the suspension and showing the action of the board of supervisors in approving the suspension.

Eligibility for medical assistance for the aged does not constitute cause for retroactive cancellation, suspension, or revocation of aid.

12201. If the board of supervisors, in accordance with Section 12200, cancels, suspends, or revokes aid, the recipient shall be immediately notified in writing of the county's action, the date thereof, and of the reason therefor and the recipient's right to appeal therefrom.

12202. If, at any time, the department has reason to believe that aid has been obtained improperly, it shall cause special inquiry to be made and may suspend payment of any installment pending the inquiry. It shall notify the board of supervisors of such suspension. If it appears upon inquiry that the aid was obtained improperly, it shall be canceled by the department, but if it appears that aid was obtained properly, the suspended payments shall be payable.

Appendix III

Excerpts from California Regulations for Withholding Welfare Payments

1. California State Department of Social Welfare, Public Social Services Manual:

44-325 CHANGES IN AMOUNT OF PAYMENT

.4 *Withheld Payment*

.41 Withheld Payment—Defined

A withheld payment is one which is held beyond the usual delivery date while information concerning needs, income or basic eligibility is investigated, subject to Section 44-325.43.

.42 Limitations on and Requirements for Withholding of Aid Payment

Subject to the following limitations, aid payments shall be withheld when further investigation is necessary to determine continuing eligibility.

.421 Recipients should have the assurance of regular and continued aid payment without interruption or delay. Accordingly, an aid payment may be withheld beyond the usual delivery date only when evidence which is both substantial in nature and reliable in source is received by the county, indicating:

a. Probable ineligibility of the recipient, or
b. A probable overpayment has occurred or is occurring which can be adjusted only if aid payment is withheld.

.43 *Notification to Recipient When Aid Payment is Withheld*

The recipient, the parent or other person responsible for the child in *AFDC*, shall be notified, in

writing, immediately upon the initial decision being made to withhold a warrant beyond its usual delivery date for any reason other than death, and in no case less than three (3) mail delivery days prior to the usual delivery date of the warrant to the recipient. The county shall give such notice as it has reason to believe will be effective including, if necessary, a home call by appropriate personnel. Form ABCD 239, Notice of Action, or a substitute form, may be used for this purpose. Every notification shall include:

.431 A statement setting forth the proposed action and the grounds therefor, together with what information, if any, is needed or action required to reestablish eligibility or to determine a correct grant.

.432 Assurance that prompt investigation is being made; that the withheld warrant will be delivered as soon as there is eligibility to receive it; and that the evidence or other information which brought about the withholding action will be freely discussed with the recipient, parent, or other person, if he so desires (see Section .434 below).

.433 A statement of whether, if aid is withheld, the recipient will or will not continue to be certified for medical assistance during the month aid is withheld.

.434 A statement that the recipient, parent, or other person may have the opportunity to meet with his caseworker, an eligibility worker, or another responsible person in the county department, at a specified time, or during a given

time period which shall not exceed three (3) working days, and the last day of which shall be at least one (1) day prior to the usual delivery date of the warrant, and at a place specifically designated in order to enable the recipient, parent, or other person:

(a) To learn the nature and extent of the information on which the withholding action is based;

(b) To provide any explanation or information, including, but not limited to that described in the notification pursuant to Section .431 above;

(c) To discuss the entire matter informally for purposes of clarification and, where possible, resolution.

.44 *Investigation and Time Limitations*

.441 Evidence raising doubt concerning eligibility or the correctness of grant is to be evaluated, and any needed investigation initiated and completed promptly, regardless of whether there is basis for withholding an aid payment. Such investigation must be completed and appropriate action with respect to the grant taken, within not more than 30 calendar days after the date on which the information which raised doubt concerning eligibility or the grant was received by the county. (See Section 40-155.2 regarding Methods of Investigation.)

.442 Aid payment for a second month may be withheld when the investigation is completed and

the facts regarding continuing eligibility or correctness of grant are established too late in the 30-day period:

a. To permit any necessary discontinuance of aid prior to the second month unless the aid payment is withheld, or

b. To permit necessary adjustment in the aid payment where eligibility continues but to a lesser amount, and delay in the adjustment for another month would result in overpayment which could not be adjusted.

When aid is withheld for a second month the withheld warrants shall be reissued in the correct amount and delivered to the recipient within a maximum of ten calendar days following the normal due date for the second withheld warrant, or delivered to the recipient and a current cash adjustment obtained from him. (See Section 44-333.12.)

(Effective 4-1-68)

40-155 PRINCIPLES AND METHODS OF INVESTIGATION

.1 *Principles of Investigation*

.11 All information secured in the process of determining eligibility shall be evaluated in light of its internal consistency.

.12 Each piece of evidence shall be evaluated in light of the motives and adequacy of knowledge of the person completing the record or document or making the statement.

.13 Evidence shall be evaluated qualitatively rather than quantitatively.

.14 In *AB* the sworn statements, affidavits or affirmations, of the applicant or recipient shall be presumed to be true except with respect to degree of blindness.

.15 When evidence is conflicting, inconsistent or incomplete, the investigation shall be pursued to the point that the preponderance of evidence supports the decision as to eligibility.

.16 All examination reports made to determine degree of blindness in *AB*, or disability in *ATD* are evaluated by the SDSW.

.2 *Methods of Investigation*

.21 The exploration of facts relating to eligibility of the applicant is a joint responsibility of the applicant and the county. Documents and other forms of information in the applicant's possession or readily available to him are to be considered before the evaluation is extended to other sources. To the extent that such evidence appears to be reasonably reliable, complete, and consistent, it shall be accepted as establishing eligibility.

.22 Other sources of information are to be sought only when the applicant does not have information and other evidence to support his application, or when such information and evidence as he is able to give is contradictory or inconclusive. In such case, the investigation is to be directed toward obtaining the most readily available reliable evidence for determining eligibility and need.

.23 The applicant or recipient shall to the extent he is able, assume responsibility for obtaining such additional information and evidence as is needed in the investigation process. However, when he is unable to assume this responsibility in full or in part, the

county shall take the initiative in obtaining the information and evidence.

.24 All such further investigation, including any necessary contacts with collateral sources, shall be undertaken only with the full knowledge of, and agreement by, the applicant and only following full explanation to the applicant of the information desired, why it is needed, and how it will be used.

When needed in such further investigation, and as evidence of the applicant's consent thereto, a specific consent form, signed by the applicant and, if necessary, by his spouse (by both parents in *AFDC* when this is possible) shall be obtained for each such contact. The consent form should cover the purpose of the specific contact as well as the individual or agency to be consulted. Form 228, Applicant's Authorization for Release of Information, may be used for this purpose. A signed consent form is not required when public records are used.

.25 If the applicant is reluctant or unwilling to help resolve inconsistencies or questions concerning his eligibility or to have the county pursue the investigation on his behalf, his reasons are to be considered carefully with him. Such consideration will help assure mutual understanding of the facts and why further investigation is needed. It also will help prevent the applicant from deciding unnecessarily or unwisely to withdraw his application when he may be eligibile. (Effective 4-1-67)

40-181 CONTINUING ACTIVITIES AND INVESTIGATION

.1 *General County Responsibility*

.11 The county paying aid is responsibile for continuing investigation to insure payment only to eligible re-

cipients in the correct amount, to assist recipients to meet their financial and service needs as fully as possible, and to make maximum use of their resources and capacities. The decision as to the frequency of investigation is based upon consideration of all pertinent circumstances in each case. The reinvestigation shall not interfere with the prompt payment of aid unless there are reasonable grounds to suspect that a change has occurred which may result in ineligibility or in overpayment which could not be adjusted within the adjustment period.
Aid shall not be withheld, suspended, or discontinued without compliance with Sections 44-325.42 and 44-325.43.

In *AB* or *ATD* when disability or blindness is the only eligibility factor that is in question the person shall be considered *medically* eligible until such time as an official notification from the State Department of Social Welfare declaring him ineligible is received by the county.

.12 The county is responsible for continuing investigation to identify promptly service needs of the recipient, including medical assistance, and to provide these services. This includes provision of protective services and initiation of guardianship or conservatorship proceedings as needed. (See Services chapter and Section 40-151.)

(Effective 4/1/68)

.13 Controls shall be set up for each item subject to change to insure that contacts are made at the right time. (See section on County Responsibility for Index and Control Files.)

.2 *Periodic Reinvestigation*

.21 In *AB, ATD, OAS,* a reinvestigation of all circumstances of the recipient subject to change shall be made at least once annually whether or not certain aspects of the recipient's situation have been reinvestigated earlier. The due date shall be set according to any plan which provides for completion of such a reinvestigation not later than 12 months from completion of the initial investigation or of the previous reinvestigation.

.22 In *AFDC,* a reinvestigation shall be made not later than six months from the last investigation except cases designated as *AFDC-U* shall be reinvestigated at least every three months.

.23 The county shall consider as the date of completion of the periodic reinvestigation the date the county worker or the case supervisor or the county welfare director signs the reverse of the completed Reaffirmation of Eligibility, Form 206, or in *AFDC,* Form 201.

.24 If a recipient's circumstances change in such a way that it is necessary to review certain aspects of eligibility before the reinvestigation due date, it is desirable to complete the reinvestigation at that time even though the next annual reinvestigation is not yet due. The next due date is then adjusted accordingly.

.3 *Reinvestigation Methods*

.31 Regulations governing the method of the initial investigation also govern all continuing investigations and the periodic reinvestigations. (See Section 40-155.)

.32 The reinvestigation shall include an interview with the recipient preferably in his own home or in the institution where he is living.

.33 In *AFDC* the reinvestigation shall include an interview with the parent or the person responsible for the child, preferably in the home, within a three-month's period prior to the completion of the reinvestigation. Services are provided and plans revised if indicated.

.34 In *AB, ATD, OAS* the recipient shall complete and sign the Form 206, Recipient's Reaffirmation of Eligibility. If the recipient has a guardian or conservator of his estate, the Form 206 shall be completed by such guardian or conservator. If the recipient is unable to comprehend the significance of his receipt of public assistance, to manage his resources, etc., and/or to enter into the procedure of establishing his continuing eligibility, he is considered incapable of completing the required reaffirmation. In such case, if a guardian or conservator of the estate has not been appointed, the Form 206 may be completed and signed on the recipient's behalf by a relative, a close personal friend, or by a representative of a public agency provided such person has all the necessary knowledge of the recipient's circumstances and is willing to affirm thereto.

.35 The recipient's statements and/or the statements of his guardian or any other person acting for him and completing the affirmation together with information obtained from all other sources, shall be evaluated in the light of facts previously known and in relation to potentials for change in eligibility status or amount of grant.

.36 Inability of the recipient to act in his own behalf in completing the affirmation is evidence of need for an immediate evaluation by the county of his individual circumstances (if such has not already been done), a determination of whether he is in need of protective services and, if so, development of a plan for meeting the need. Responsibility rests with the county to arrange for such protective service when indicated. (See Section 40-151.)

.37 In *AFDC* the parent or person (see Section 40-117) acting in the place of the parent shall complete and sign the affirmation Form CA 201 as his affirmation of continuing eligibility.

(Effective 4/1/67)

DIVISION 48 CASE RECORDS

CHAPTER 48-000 CASE RECORDS—GENERAL

48-001 COUNTY DEPARTMENT RESPONSIBILITY FOR CASE RECORDS

The county is responsible for maintaining a case record for each applicant and recipient which identifies each individual and family, their address and household composition. For *AFDC* the record shall identify each child and his parents, their address and household composition. For *OAS* and *AFDC* responsible relatives shall be identified. The record shall also show:

.1 *Case Records—Eligibility, Grant and Investigation*

.11 Each eligibility factor was determined as provided in the appropriate chapter of the Public Social Services Regulations; the investigation was made in accord with Section 40-155 (Principles and Methods of Investigation); the facts recorded by the applicant or recipient; the pertinent information ob-

tained during the investigation, and the sources from which relevant data was secured.

.12 The original or a copy of all forms completed during the initial and subsequent investigations, and forms relating to any transfer of responsibility for payment of aid between counties, correspondence to and from the county pertinent to the individual's eligibility, his grant and any activities toward meeting economic and social needs. Copies of the Form 239 or the 239A need not be retained provided the date they were mailed is recorded.

.13 The basis for the decision that the individual met, or did not meet, the conditions of eligibility, as well as the basis for holding an application pending eligibility as provided in Section 40-171.1, Application Held Pending Eligibility.

.14 That income and resources were explored and that the amount was computed as specified in the Income Chapter, 41-100 and the Property Chapter, 41-300.

.15 The total needs of the individual or family under the appropriate standard and the basis for the decision that he does or does not meet the conditions under which special needs are allowed and how the money amounts allowed were determined as specified in the Needs Chapter, 44-200. For *AFDC*, the basis for inclusion or exclusion of persons in the Family Budget Unit. For *ATD*, the needs of the individual that cannot be met through the grant.

.16 The computation of the amount of any overpayment, and the amount of repayment due, if any; a copy of any demands for repayment; the facts regarding the determination of the debtor's ability to repay and collection activity as required by Section F-420,

et seq., unless this information is recorded centrally elsewhere.

.17 The county action granting, denying, changing, withholding, canceling or discontinuing aid.

.18 A narrative or text containing relevant data (including dates) secured during client or collateral contacts which does not appear elsewhere in the case record (or which is necessary to augment or reconcile data or information recorded in forms or correspondence); entries to reflect the client's reaction to or understanding of the county's interpretation of his rights and responsibilities; the name of the person responsible for each entry in the text and the date of entry.

.2 *Case Records—Intraprogram Status Change*

.21 A record of any intraprogram status change as provided in Regulation 40-183, Intraprogram Status Change, and the basis, therefore, as well as the basis for the determination of the program (*AB* or *APSB*) which is more appropriate for the applicant/recipient. (See Secs. 45-029, Carrying Out the Adult Service Plan, and 40-125.6, Selection of Appropriate Program for Blind Applicants.)

.3 *Case Records—Care in a Medical Institution*

.31 For the recipient 65 years of age or over who is a patient in a public or general medical institution, or in *ATD*, a public or private general medical institution as a result of a diagnosis of mental illness or tuberculosis. (See Secs. 42-605.2, Public Medical Institution, and 42-611.3, Patient in a General Medical Institution-Diagnosis of Tuberculosis or Psychosis.)

.311 The date of the recipient's admission to the medical institution.

.312 The estimated period of care in the medical institution.

.32 For a recipient who is a patient in a public or private hospital or nursing home:

.321 A statement of whether the medical facility is certified under the Medi-Cal Program as a hospital or a nursing or convalescent home.

.322 The date of the patient's admission to the medical facility, the dates of any absences from the facility, and the date of discharge.

.323 If the medical facility is a state hospital for the care of the mentally ill or the mentally retarded, pertinent information to support the determination of eligibility as provided in Department Bulletin No. 650.

.4 *Case Records—Certification for Medi-Cal*

A record of the certification and each recertification of the recipient for medical care under the Medi-Cal Program.

.5 *Case Records—Services*

.51 That the service needs of the recipient were explored, a social study completed, when appropriate; the plan developed for meeting identified needs and progress of the service plan as required by the Services Chapter. Except for *OAS*, this includes the individual's plan for self-support.

.52 That referrals required in the Services Chapter were made. In *AFDC* notification or referral was made to the district attorney or notification to the

court when required under Sections 42-527, Referral and Notification to District Attorney, and 42-529.1, Notification to the Court.

.53 County efforts to assist the family toward self-maintenance and family efforts to achieve self-maintenance. (See Services Chapter.)

48-013 INSPECTION OF RECORDS BY APPLICANT OR RECIPIENT

The applicant, recipient or his attorney or authorized representative (attorney or agent) may inspect the case records including the entire case narrative relating to the applicant or recipient which are filed in the SDSW or the county with the following exceptions:

.1 *Privileged Communications*

Portions of the record which qualify as "privileged communications" as defined in Sections 954 (lawyer-client), 980 (marital communications), 1040 (official information), and 1041 (identity of informer) of the Evidence

(Effective 3/1/68)

2. California State Department of Social Welfare, Operations Manual

22-109 REQUEST FOR REVIEW AND FAIR HEARING:

COUNTY DEPARTMENT RESPONSIBILITY

.1 *Availability of Review*

In all individual relationships the county shall strive for prompt, simple and precise explanations of its actions to assure the maximum understanding on the part of the individuals. If this is not achieved between the individual and the social worker, the county shall be responsible for providing administratively a process through which

the individual will receive an appropriate explanation or a resolution of his problem. (See Regulations Sections 40-131.41 and 44-325.434.)

.2 *Designation of Staff to Conduct Review*

.21 The county department, in accordance with its size and/or administrative structure, shall specifically designate staff to be responsible for the activities connected with requests for review. Such staff shall be in a position to reassess promptly the client's situation in the light of applicable regulations with freedom to consider alternatives other than confirmation of the action under review.

.22 The county department's designated staff shall have authority to take immediate action and effect any adjustment as may be appropriate. In the review special attention should be given to discover and correct:

.221 Failures of communication between complainant and worker.

.222 Erroneous application of public social service or food-stamp regulations.

.223 Failure to provide aid and services promptly and humanely, without discrimination, and in a manner as to encourage self-respect and self-reliance.

.3 *Dissatisfaction with Review*

As part of the review process, the client shall again be informed by county staff of his right to a fair hearing.

22-113 STATE DEPARTMENT OF SOCIAL WELFARE RESPONSIBILITY

.1 The State Department of Social Welfare is responsible for providing a process whereby the individual who has

not achieved an understanding with the county may have his situation reassessed and reviewed promptly.

.2 The State Department of Social Welfare complaints Staff shall receive the request for review, contact the designated staff in the appropriate county, inform the county of the client's problem, and request that the problem be promptly reassessed. The State Department of Social Welfare staff may inform the county of the intent or meaning of applicable regulations. As part of the review process the client shall be informed of his right to a fair hearing. (Effective 7/1/68)

22-200 CIENT COMPLAINTS AND FAIR HEARINGS IN PUBLIC SOCIAL SERVICES

22-203 CONCEPTS AND CONSIDERATIONS

.4 *Written Confirmations of County Welfare Department Actions* (40-173, 40-107.3 and 21-021)

County welfare departments inform their clients of their actions through interviews followed by written confirmation on the ABCD 239, Notice of Action. The ABCD 239 often bears no more than two or three sentences or a coded phrase to indicate the basis for denial, withholding or discontinuing. Good practice demands that whenever elements of an interview are confirmed in writing, that the confirmation should reflect all significant elements of that interview. Action notices so brief that they omit confirmation of understanding achieved through discussion, tend to distort rather than clarify. In most cases, therefore, it will be advisable to accompany the ABCD 239 with a letter.

There are advantages in using a comprehensive confirming letter discussing the basis of the department's actions

in the event of denial or other major change in aid status. Use of such letters results in:

(1) Better focused and structured interviews by staff who wrote the confirming letter.
(2) Discovery of additional possibilities for adjustment or the better use of other resources.
(3) Improvement in relations with community organizations and advocacy resources when such letters were available as documentary evidence.
(4) Great assistance in preparation of bases of action, should a request for fair hearing be filed.

Notice of Action letters should include at least these elements:

(1) The reasons for the action in light of the rules and of the facts as understood by the county, all stated in understandable terms.
(2) Responses to questions raised by the client.
(3) Recognition of problems or unmet needs.
(4) Referrals to resources.
(5) Right of fair hearing and referral to legal resources, when available, for help in preparing for the hearing.
(6) Statement of what information, if any, may be needed. (When appropriate.)

.5 *Complaints* (22-101)

Many situations arise that bear the label "complaint." However, for the fair hearing process, only that situation which can be designated "client complaint" has much meaning. The term "client complaint" does not apply when the client is addressing an issue(s) to the social work unit. As long as the client's concern is directed to the unit, the situation is still fluid and subject

to normal casework resolution. If the issue is not resolved to the client's satisfaction, it may then become a "client complaint" or a request for fair hearing. Indication of client dissatisfaction addressed to administrative staff or referred to the county welfare department from SDSW, the Governor, legislators, boards of supervisors, other "VIPs" or the client himself are considered "client complaints."

Landlord complaints or neighbors reporting what they consider to be client misconduct, individuals or groups taking issue with welfare policies or procedures, or negative reactions toward welfare recipients in general are more closely related to public relations operations than to fair hearings. Such public complaints require immediate attention by the county welfare department. Procedures for handling this type of complaint have been developed by county welfare departments. However, information about client behavior from neighbors or other interested parties, hostile or other, may be relevant to the helping process or to eligibility determination, and should also be forwarded systematically to the responsible social work unit.

22-205 ESTABLISHMENT OF A COMPLAINTS AND APPEALS UNIT (COORDINATOR/SPECIALIST)

Increase in the volume of issues arising between the welfare system and its clients has led many counties to combine client complaint and fair hearing responsibilities and assign them to one position or to an administrative unit. This provides the county with a systematic and uniform approach to resolving issues. The size of the county determines whether this unit shall be composed of one or more persons, or an individual who devotes part time to

complaints and appeals. If the unit is an individual, full or part time, he might be designated "C&A Coordinator or Specialist." In a small county this person might be the director, assistant director, or program supervisor. The unit functions as the director's representative in complaint and appeal matters. Assignment of this function should be made in terms of the best way it can be integrated into existing organizational structure and procedures.

The material which follows sets forth functions and tasks which make a logical group of related responsibilities.

.1 *Role and Authority*

A complaints and appeals unit specializes in handling "client complaints" and fair hearings. Their basic responsibility is to enhance the issue resolving process. Complaints and Appeals specialists have a thorough knowledge of statutes and SDSW fair hearing regulations, as well as program regulations. They are familiar with county administrative procedures and the goals and objectives of all programs. Complaints and Appeals specialists have the authority to take immediate action and effect any adjustment as may be appropriate at every stage in issue resolution. (22-023, 22-109.2)

The specialist has several roles.

.11 His broad knowledge of program enables him to furnish consultation before a "client complaint" has become a request for fair hearing. He may modify or reverse the line decision, within the scope and intent of the regulations and statutes. Such action could settle the issue, thereby resolving the complaint and eliminating a possible fair hearing request.

.12 The same approach applies following request for fair hearing, with the emphasis on reaching an

equitable solution without the necessity of going to hearing.

.13 Where no such avenues can be found, he helps prepare a clear and fair presentation of the issue(s) at the fair hearing. He is not limited to presenting "the county's case." His role is to help all parties present all relevant facts with a view toward effecting the most equitable possible decision.

.14 He keeps appropriate administrative staff aware of implications arising out of complaint and fair hearing activity.

.2 *Specific Tasks and Functions of the Complaint and Appeal Unit*

.21 *Basic Objectives*

The responsibility of a CWD is to assure that all possibilities of adjustment are explored and all resources, within and outside the welfare system, are mobilized to meet the client's need. The Complaints and Appeals unit sees to it that special procedures, i.e., case record removal occasioned by preparation for the hearing, do not cause an interruption in service, delay in aid payments, or delay in meeting any other needs the client may have while all possibilities of adjustment are explored.

(Issued 3/1/69)

Appendix IV

In the Court of Appeal of the State of California
First Appellate District, Division Three

1 Civil No. 25830

Filed Aug. 19, 1969,
Court of Appeal—First App. Dist.
Lawrence R. Elkington, Clerk

Mary McCullough, Melvin McCullough, Michael Johnson and Rosaline Johnson, by their Guardian Ad Litem Mary McCullough,

Plaintiffs and Respondents,

vs.

Hrayr Terzian, Director of the Alameda County Welfare Department, John Montgomery, Director of the Department of Social Welfare of the State of California,

Defendants and Appellants.

OPINION

On April 19, 1968, respondents filed in the Superior Court in Alameda County a petition for writ of mandate and a complaint for declaratory relief on their own behalf and on behalf of all persons in the State of California receiving Aid to Families with Dependent Children benefits.[1] Both causes of action were based on the contention that express provisions of the Welfare and Institutions Code and the due process clauses of the California and United States Constitutions require an adequate hearing prior to the withholding or termination of AFDC benefits.

1. For editorial purposes, Aid to Families with Dependent Children will hereafter be described as AFDC.

On the date the action was filed, an alternative writ of mandate was issued directing appellants John Montgomery, Director of the State Department of Social Welfare, and Hrayr Terzian, Director of the Alameda County Welfare Department, to release forthwith the warrant due the named petitioners on April 1, 1968 and all other warrants due them thereafter under the AFDC program or show cause why they should not do so. On April 25, 1968, the return date on the alternative writ, appellants appeared and filed a responsive pleading. It was stipulated that the class of persons represented by the named petitioners consisted of recipients of public assistance under the Aid to Blind, Aid to Needy Disabled, Old Age Security, and AFDC programs, the so-called "categorical aid" programs, rather than under the AFDC program only.

The court found that appellants had substantially complied with the provisions of section 44-325.43 of the State Department of Social Services Manual (hereinafter referred to as PSS 44-325.43[2] in terminating the named peti-

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2. "The recipient, the parent or other person responsible for the child in *AFDC*, shall be notified, in writing, immediately upon the initial decision being made to withhold a warrant beyond its usual delivery date for any reason other than death, and in no case less than three (3) mail delivery days prior to the usual delivery date of the warrant to the recipient. The county shall give such notice as it has reason to believe will be effective including, if necessary, a home call by appropriate personnel. Form ABCD 239, Notice of Action, or a substitute form, may be used for this purpose. Every notification shall include:

.431 A statement setting forth the proposed action and the grounds therefor, together with what information, if any, is needed or action required to reestablish eligibility or to determine a correct grant.

.432 Assurance that prompt investigation is being made; that the withheld warrant will be delivered as soon as there is eligibility to receive it; and that the evidence or other information which brought about the withholding action will be freely discussed with the recipient, parent, or other person, if he so desires (see Section .434 below).

(Continued on following page)

tioners' public assistance benefits; that the petitioners were caused irreparable injury by the withdrawal of said benefits; and that the class of persons receiving public assistance benefits under the categorical aid programs was adequately represented by the named petitioners. The court concluded that the procedures established by PSS 44-325.43 and followed by appellants failed to provide the hearing required by law.

The judgment declared invalid the regulation contained in PSS 44-325.43 "because and to the extent that it does not provide a hearing with adequate procedural safeguards" prior to the withholding of categorical aid benefits as required by state law and the United States and California Constitutions. The judgment also ordered the issuance of two peremptory writs of mandate.

It is from this judgment that the appellants appeal. The facts of the case relative to the named respondents need not be stated here as they have since been afforded a "fair hearing" and found eligible for continued aid. Therefore the only issues remaining are those raised by the class action, namely:

.433 A statement of whether, if aid is withheld, the recipient will or will not continue to be certified for medical assistance during the month aid is withheld.

.434 A statement that the recipient, parent, or other person may have the opportunity to meet with his caseworker, an eligibility worker, or another responsible person in the county department, at a specified time, or during a given time period which shall not exceed three (3) working days, and the last day of which shall be at least one (1) day prior to the usual delivery date of the warrant, and at a place specifically designated in order to enable the recipient, parent, or other person:

(a) To learn the nature and extent of the information on which the withholding action is based;

(b) To provide any explanation or information, including, but not limited to that described in the notification pursuant to section .431 above;

(c) To discuss the entire matter informally for purposes of clarification and, where possible, resolution."

I. Does PSS 44-325.43 satisfy the procedural due process requirements of the United States Constitution?

II. Does PSS 44-325.43 satisfy the procedural due process requirements of the California Constitution and the statutory provisions of the California Welfare and Institutions Code?

The regulations in question must be considered in the light of the fact that if aid is terminated or modified the state must grant the recipient a "fair hearing" as provided in Welfare and Institutions Code section 10950, et. seq. and a judicial review as provided in Welfare and Institutions Code section 10962.

I. Does PSS 44-325.43 satisfy the procedural due process requirements of the United States Constitution?

The appellants contend that the regulations in question meet due process requirements of the United States Constitution. The regulations require prior notice specifying the proposed action to be taken, grounds therefor, information needed to determine eligibility, and a subsequent opportunity to be heard and to be represented by counsel, to the end that a fair determination can be made. Full disclosure is to be made by the county of the information upon which the proposed action is based. The notice may be given and aid withheld only if the county has evidence "which is both substantial in nature and reliable in source . . . indicating . . . probable ineligibility. . . ." (PSS 44-325.421.) The recipient or his attorney also has the right to inspect the case file in the state department or any county at any time during business hours. (Welf. & Inst. Code § 11206.) Appellants further contend that the constitutionality of the regulations in question was raised in *Wheeler v. Mont-*

gomery (U.S.D.C., N.D. Calif., Civ. Act. 48303), before a 3-judge court, and that court found the regulations comport with the due process provisions of the United States Constitution. A federal court in New York found a regulation of New York State, in some respects similar to the California regulation, not to be in accord with the United States Constitution. (Goldberg v. Kelly, U.S.D.C., S.N.Y.) The United States Supreme Court has noted probable jurisdiction in both cases.

The respondents contend that the regulations fail to include the necessary elements of due process in that they (1) fail to provide adequate notice; (2) do not provide for confrontation and cross-examination of witnesses; (3) do not require a decision based on evidence produced at the hearing and on the merits; (4) do not provide an impartial trier of fact; and that there is no compelling public necessity for these procedural inadequacies.

Were the requirements of due process specified in the constitution or by statute our task would be simplified. However, such is not the case. As stated by the California Supreme Court in *Sokol v. Public Utilities Commission,* 65 Cal.2d 247, 254: "What is due process depends on circumstances. It varies with the subject matter and the necessities of the situation." In *Cafeteria Workers v. McElroy,* 367 U.S. 886, 894-895, the United States Supreme Court stated: "The Fifth Amendment does not require a trial-type hearing in every conceivable case of government impairment of private interest. 'For, though "due process of law" generally implies and includes *actor, reus, judex,* regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceedings, . . . yet, this is not universally true.' [Citation] The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation. [Citations] '"[D]ue process," unlike some legal rules, is not a

technical conception with a fixed content unrelated to time, place and circumstances.' It is 'compounded of history, reason, the past course of decisions. . . .'"

Public welfare in the United States is a tremendous undertaking involving millions of recipients. Applications for aid must be processed promptly and with a minimum of delay to the recipient, and modification and termination of benefits must likewise be handled in a prompt manner if the system is to function. These are the circumstances that must be considered in determining the content of due process in this case. In the case of *Escobedo v. State of California,* 35 Cal.2d 870 (see also Orr v. Superior Court, 71 A.C. 233) where the charge was made that the statute violated the due process provisions of the state and federal constitutions in not providing for a hearing before suspension of a driver's license, the court stated that due process was not violated as the procedure was reasonably justified by a compelling public interest considering the substantial number of drivers involved, and to require a hearing in every case before suspension would substantially burden and delay if not defeat the operation of the law. The *Escobedo* and *Orr* cases pertain to the financial responsibility of drivers, as distinguished from those cases dealing with public safety and health.

There being no fixed rule it is necessary, therefore, to test the regulations in the light of respondents' contentions against the requirements of past decisions.

Turning to the respondents' first contention, that the regulations fail to provide adequate notice, Section 44-325.43 provides: "The recipient . . . shall be notified, in writing immediately upon the initial decision being made to withhold a warrant beyond its usual delivery date for any reason other than death, and in no case less than three (3) mail delivery days prior to the usual delivery date of the warrant to the recipient." Neither party has offered any statement

of fact or cited any authorities to show that the period allowed is or is not adequate, and we cannot say as a matter of law that the 3-day notice is inadequate.

The respondents next contend that confrontation and cross-examination of witnesses are essential elements of due process. Respondents cite *Greene v. McElroy*, 360 U.S. 474, 508; *Walker v. City of San Gabriel* (1942) 20 Cal.2d 879, and *Willner v. Committee on Character* (1963) 373 U.S. 96, 103. These cases do not hold that confrontation and cross-examination are essential to due process.

The *Greene* case involved a firing of the petitioner for security reasons. In the petitioner's hearing before the review board he was not permitted confrontation or cross-examination of witnesses. The actual question before the court was whether the President and Congress had delegated the power to the Secretary of Defense to conduct a hearing in this manner. The court found they had not. The court then ruled "We decide only that in the absence of explicit authorization from either the President or Congress the respondents were not empowered to deprive petitioner of his job in a proceeding in which he was not afforded the safeguards of confrontation and cross-examination." The court specifically stated it was not deciding the constitutionality of the question.

In the *Walker* case the only evidence offered the city council in a hearing to revoke a business license was a letter from the chief of police setting forth numerous charges against the licensee. The licensee maintained that until the witnesses were produced and an opportunity given to cross-examine them there was no evidence before the city council. The Supreme Court did not even comment in its opinion on this point but decided the case on the issue of what constitutes substantial evidence.

The *Willner* case at the most holds "that procedural due process often requires confrontation and cross-examination of those whose word deprives a person of his livelihood." The concurring opinion points out "this does not mean that in every case confrontation and cross-examination are automatically required. It must be remembered that we are dealing, at least at the initial stage of proceedings, not with a court trial, but with a necessarily much more informal inquiry into an applicant's qualifications for admission to the bar."

On the other hand, the right to confrontation and cross-examination was expressly rejected in *Dixon v. Alabama State Board of Education,* 294 F.2d 150, and was not listed among the requirements of due process in *Knight v. State Board of Education,* 200 F.Supp. 174. (See also Thorpe v. Housing Authority, 386 U.S. 670.)

In view of the above authorities, confrontation and cross-examination of witnesses cannot be held to be an essential element of due process in a pretermination hearing.

Respondents further contend that the failure of the regulations to require a decision by a person having no prior direct involvement in a case renders them inadequate to provide the protection required by due process.

Respondents quote from *Wasson v. Trowbridge,* 382 F.2d 807, 813: "It is too clear to require argument or citation that a fair hearing presupposes an impartial trier of fact and that prior official involvement in a case renders impartiality most difficult to maintain." However, that court did not hold that a person with prior official involvement could not hear the case but only that the petitioner had the right to show that the prior involvement was such that bias could be presumed.

The California Supreme Court in *Griggs v. Board of Trustees,* 61 Cal.2d 93, 97, a case involving the dismissal of a school teacher, stated: "In support of the determination of

the trial court that Mrs. Griggs was deprived of a fair trial, it is asserted that, prior to the hearing, the members of the board took evidence, held discussions with outsiders and expressed opinions concerning the accusation filed by the superintendent. We find nothing improper in the conduct of the members of the board."

In the light of *Griggs* the fact that the person conducting the hearing has had prior involvement in the case does not of itself constitute a violation of due process.

The respondents further contend that the regulations fail to require a decision based on evidence produced at a hearing. The respondents point out that under the challenged regulation, the initial review and evaluation of the county's evidence takes place ex parte before the recipient is even notified of any proposed action.

It is true that the regulations do not specify that the decisions be based on the evidence produced at the hearing; however, numerous cases in California hold that "the requirement of a hearing necessarily contemplates a decision in the light of the evidence introduced." (English v. City of Long Beach, 35 Cal.2d 155; La Prade v. Department of Water & Power, 27 Cal.2d 47; Carroll v. California Horse Racing Bd., 16 Cal.2d 164.) The county is bound by this requirement and it would be an empty act to conduct a hearing if this were not the case. The fact that the initial review and evaluation of the county's evidence takes place ex parte before the recipient is notified of any proposed action is not improper in the light of *Griggs v. Board of Trustees, supra.* In *Griggs* the court stated: "The first step to be taken in the termination procedure is the notification to the teacher that his services will not be required for the ensuing year. It is thus clear that, before there is any occasion for a public hearing, the board must make an ex parte determination that there is good cause for dismissal, and, in order

to be able to make this decision, the board must have some knowledge of the facts." This is essentially the procedure provided for in the regulations.

We conclude that the regulations do comport with the due process clause of the United States Constitution.

II. Does PSS 44-325.43 satisfy the procedural due process requirements of the California Constitution and the statutory provisions of the California Welfare and Institutions Code?

The respondents correctly state the point that in addition to the federal constitutional issues involved here, the State of California may insist upon greater procedural rights for its citizens than those required by the Fourteenth Amendment.

Looking first to the California Constitution, Article I, section 13 provides that no person shall be deprived of life, liberty or property without due process of law. In *Abstract Investment Co. v. Hutchinson,* 204 Cal.App.2d 242, it was held that this provision is "identical in scope and purpose with the Fourteenth Amendment," so, in effect, adds no additional safeguards to those already included in the federal constitution.

Welfare and Institutions Code sections 11458, 12200 and 12700 provide that benefits under the categorical aid programs may be withdrawn "for cause". Both parties in this case agree that "for cause" requires notice and hearing before a withdrawal of benefits.

The case cited by both parties, *Ratliff v. Lampton* (1948) 32 Cal.2d 226, and the cases cited by respondents, *Carroll v. California Horse Racing Bd., supra* (1940) 16 Cal.2d 164; *La Prade v. Department of Water & Power, supra* (1945) 27 Cal.2d 47; *Covert v. State Board of Equalization* (1946) 29 Cal.2d 125, and *Steen v. Board of Civil Service Commrs.* (1945) 26 Cal.2d 716, all stand for the rule that where an

agency is required by statute to act for cause, an affected party must be afforded a hearing prior to action unless there is a clear showing of a contrary legislative intent. However, as the regulations in the present case do provide for a pretermination hearing, these cases are of little help. The appellants assert that the hearing required by the statute need be no more than that required by due process. The respondents maintain that in *Ratliff* the court specifically rejected this contention and that *Ratliff* stands for the proposition that "for cause" in a statute means more than due process in the constitution.

Presuming the correctness of respondents' position that the words "for cause" in the statute require a hearing prior to termination, the respondents have no cause for complaint as the regulations provide the hearing. *Ratliff* did not specify how the hearing was to be conducted, as that was not an issue in the case.

Here the regulations provide a pretermination hearing in compliance with due process, and as such fulfill the requirements of California law.

The appellants state that according to department regulations the county "should reach a decision as soon as possible" following the pretermination hearing. Actually, if the pretermination hearing is to have any meaning the decision must be rendered before aid can be withheld.

The motion to take judicial notice of the regulations submitted by appellants is granted. The motions made pursuant to California Rules of Court 23(b) are denied.

The judgment is reversed.

Caldecott, J.

We concur:

Draper, P. J.

Brown (H.C.), J.